NO. 42701-0

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

RAVEN PIERCE, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Beverly G. Grant

No. 10-1-04723-1

BRIEF OF RESPONDENT

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2. Whether a remand is required when the trial court sentenced defendant to a total term of confinement and total term of custody that exceeds the statutory maximum sentence?

B. STATEMENT OF THE CASE.

1. Procedure

On November 8, 2010, the Pierce County Prosecuting Attorney (State) filed an Information charging Raven Victoria Pierce (defendant) with one count of identity theft in the second degree, two counts of theft in the second degree, and one count of forgery. CP 1–3. The case was assigned to the Honorable Beverly G. Grant for trial. 1 RP 1.[1]

[1] The Report of Proceedings of the trial are labeled as Volumes I-II and are sequentially paginated. For clarity, the record will be referred to by volume number followed by the page in that volume. The voir dire and jury verdict proceedings are included separately and will be referred to on the record by date.

Before the trial testimony, the court held a hearing pursuant to CrR 3.5 to determine the admissibility of statements made by the defendant to Deputy Daniel Hacker, a twenty year veteran of the Pierce County Sheriff's Department. 1 RP 4. After hearing testimony from defendant and Deputy Hacker, the court orally concluded that defendant's statements were admissible. 1 RP 41. The court did not enter written findings of fact and conclusions of law, however, until August 2, 2012–after the filing of appellant's brief. CP 100–101; *See also* Appendix A.

At the conclusion of the trial, the jury found defendant guilty of identity theft in the second degree, both counts of theft in the second degree, but not guilty of forgery. 6/9/2011 RP 2–4; CP 75–78. Prior to sentencing, defendant stipulated to her prior record and the Court determined that defendant's offender score was a nine. 2 RP 295; CP 81–83.

On October 14, 2011, the court sentenced defendant to the maximum sentence within each standard range: 57 months in confinement for count one; 29 months for count two; and 29 months for count three, with each count to run concurrently. 2 RP 295–296; CP 84–96. Defendant was also sentenced to 12 months of community custody and ordered to pay $2,047 in legal financial obligations. CP 84–96.

Defendant filed a timely notice of appeal on October 14, 2010. CP 97.

2. Facts

a. 3.5 Hearing

Deputy Hacker testified that, in November, 2010, he was dispatched to the home of Ms. Michelle Walker regarding a fraud charge. 1 RP 14. Ms. Walker believed that her government issued Electronic Benefits Transfer (EBT) card had been fraudulently used and she provided Deputy Hacker with a financial statement that listed irregular purchases made with her card at a nearby 7-Eleven convenience store. 1 RP 14. Ms. Walker identified her once-friend, defendant Raven Pierce, as a suspect. 1 RP 14.

Deputy Hacker went to the nearby 7-Eleven and viewed surveillance footage for the transaction times listed on the financial statement that he received from Ms. Walker. 1 RP 15. Deputy Hacker did not see Ms. Walker in the surveillance footage, but did see defendant. 1 RP 15.

Deputy Hacker went to defendant's residence and recited to defendant her ***Miranda***[2] rights, which she understood. 1 RP 16. Defendant appeared to be talking freely and voluntarily. 1 RP 16. Deputy Hacker did not make any threats or promises in return for her cooperation. 1 RP 17–18, 28. Defendant admitted that she was at the 7-Eleven, but explained

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[2] ***Miranda v. Arizona***, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

that she was using her own card and was not involved in fraudulent activity. 1 RP 19. Defendant was arrested and transported to jail. 1 RP 18.

Deputy Hacker testified that, upon arrival at the jail's "sallyport,"[3] defendant admitted to using Ms. Walker's EBT card and said that she felt remorseful for doing so. 1 RP 20, 28. Defendant also admitted to switching her own EBT card with Ms. Walker's card. 1 RP 21. Defendant explained that she obtained Ms. Walker's personal identification number (PIN) by watching her use the card. 1 RP 21. Deputy Hacker testified that these statements were freely and voluntarily given. 1 RP 21.

Defendant admitted that she responded voluntarily to Deputy Hacker's questions. 1 RP 31. Defendant did not deny being in the 7-Eleven or having Ms. Walker's EBT card. 1 RP 31. Defendant testified that she voluntarily made a statement to Deputy Hacker regarding possession of Ms. Walker's EBT card; specifically, that she did not steal the card. 1 RP 31.

Defendant asserted that Deputy Hacker offered, twice, to book defendant only on the identity theft charge so long as she "told the truth." 1 RP 33–34.[4] According to defendant, she did not say anything more to

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[3] The "sallyport" is a staging area where police officers transfer arrestees from police vehicles into the custody of the corrections officers. 1 RP 20.

[4] Defendant later testified at trial that the incentive of being booked on only one charge is that she would have only one bail, and thus, would have a greater likelihood of being released from jail before the weekend (defendant was booked on a Friday afternoon). 2 RP 200.

Deputy Hacker, but instead sat and listened to him. 1 RP 34. Defendant testified that Deputy Hacker did not coerce or threaten her in any way. 1 RP 39. Defendant was booked only on the identity theft charge. 1 RP 38–39.

On June 7, 2011, at the close of the 3.5 hearing, the court made the following oral findings and conclusions:

> Having heard the testimony of the officer and defendant, this Court finds that there was probable cause for the arrest, that Miranda rights were given, and she understood them, and that her statements were made freely and voluntarily to the officer.

1 RP 41. On August 2, 2012, the court entered written findings of fact and conclusions of law. CP 100–101; *See* Appendix A.

b. Trial

Ms. Michelle Walker's EBT card was loaded with food stamp funds and cash benefits on the first day of every month. 1 RP 45. Ms. Walker used that money to buy food for her children and to pay her rent. 1 RP 44–45, 65. Ms. Walker routinely called a toll-free Department of Social and Health Services (DSHS) number at the beginning of each month to verify that her food stamp benefits had been transferred to her account. 1 RP 65. On November 1, 2010, Ms. Walker called DSHS and discovered that her card had been deactivated. 1 RP 49–50. The next day,

Ms. Walker went to a local DSHS office where she learned that the card in her possession actually belonged to defendant.[5] 1 RP 50–51.

Ms. Walker first became acquainted with defendant in September 2010. 1 RP 52. Ms. Walker frequently walked her six-year-old daughter and seven-year-old son to the bus stop with defendant and her nine-year-old daughter.[6] 1 RP 52. Ms. Walker and defendant would sometimes drop the children off at school and then walk to a 7-Eleven to buy some snacks with Ms. Walker's EBT card. 1 RP 54. A few times, defendant stood right next to Ms. Walker while she entered her PIN into the payment machine at checkout. 1 RP 55. Ms. Walker testified that, during the time that she knew defendant, she never gave her EBT card to anyone and never asked anybody else to go shopping for her. 1 RP 58.

Ms. Valerie Vertz, a DSHS Program Manager responsible for EBT system security, examined the EBT financial records for both Ms. Walker and defendant. 1 RP 71, 86–101. Ms. Vertz testified that, on November 1, 2010, shortly after midnight, Ms. Walker's EBT card was loaded with $653 dollars in food assistance and $539 of cash assistance. 1 RP 87–88. She also testified that, at 2:38–2:39 a.m., there was an ATM withdrawal

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[5] The DSHS issues EBT cards via mail and over the counter. Cards issued over the counter do not come with a persons name imprinted on the front. 1 RP 72–73.
[6] Defendant's nine-year-old daughter was living with defendant's mother, who lived in the same apartment complex as Ms. Walker. Defendant frequently visited her daughter. 1 RP 52.

on Ms. Walker's card of $400 and also of $100 at the 7-Eleven closest to defendant's mother's residence.[7] 1 RP 86–87, 98. In addition to these cash withdrawals, Ms. Walker's card was used later in the day for three food transactions and an additional cash transaction at that 7-Eleven. 1 RP 89. There was then a balance inquiry transaction on the card. 1 RP 89.

Ms. Vertz then examined defendant's EBT financial statement, which indicated that defendant's EBT card had been loaded with $359 in cash assistance on November 1, 2010. 1 RP 92. Ms. Vertz also testified that on November 1, 2010, at 2:43 a.m., there was a balance inquiry on defendant's EBT card at the exact machine that Ms. Walker's card was used at 2:38–2:39 a.m. on November 1, 2010. 1 RP 92.

Deputy Hacker testified that, upon arrival at jail, defendant admitted to switching EBT cards with Ms. Walker. 1 RP 122. Defendant also admitted that she obtained Ms. Walker's PIN by watching her use the card during previous transactions. 1 RP 122.

Defendant testified that she shopped on behalf of Ms. Walker approximately three times in October, with each transaction totaling around $50 to $60. 2 RP 172–173. She also claimed that, prior to moving on November 1, 2010, Ms. Walker gave defendant her EBT card and PIN

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[7] Ms. Vertz explained that, because the financial statement is processed in Eastern Standard Time, three hours need to be deducted from the time on the financial statement for contextualization. 1 RP 87, 95. The time listed in the State's brief reflects proper contextualization to Pacific Standard Time.

two times. 2 RP 175, 176. According to defendant, Ms. Walker came to defendant's home after trick-or-treating on October 31, 2010 and asked for a roll of toilet paper. 2 RP 179. During the visit, defendant allegedly received permission to borrow Ms. Walker's EBT card, but did not receive the card at that time. 2 RP 180. Defendant claims to have received the card on November 1, 2010, while she was moving to her new apartment. 2 RP 183–184. Defendant claimed she returned the card on November 2, 2010. 2 RP 192.

Defendant denied confessing to Deputy Hacker. 2 RP 200, 216–217. Defendant could not explain how her EBT card ended up in Ms. Walker's purse. 2 RP 217.

C. ARGUMENT.

1. THE TRIAL COURT'S FAILURE TO TIMELY ENTER WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW IS HARMLESS WHERE DEFENDANT DOES NOT CHALLENGE THE ADMISSIBILITY OF HER STATEMENTS ON APPEAL.

Prior to introducing evidence of a custodial statement, including confessions of guilt, the prosecution must prove that the statement was freely given. ***State v. Woods***, 3 Wn. App. 691, 477 P.2d 182 (1970). *See also* ***State v. Kidd***, 36 Wn. App. 503, 674 P.2d 674 (1983). Such statements are presented before the court during a 3.5 hearing, at which point the court determines whether statements will be allowed during trial.

This procedure prevents jury members from hearing improper evidence, thereby reducing the likelihood of a mistrial. ***State v. Fanger***, 34 Wn. App. 635, 663 P.2d 120 (1983). After the 3.5 hearing, the court is required to enter written findings and conclusions regarding the admissibility of evidence. CrR 3.5(c).[8] This requirement is not an empty formality. ***State v. Cunningham***, 116 Wn. App. 219, 65 P.3d 325 (2003).

Failure to enter written findings and conclusions can be reversible error if the defendant can show prejudice as a result of such failure. ***State v. Haynes***, 16 Wn. App. 778, 788, 559 P.2d 583, *review denied*, 88 Wn.2d 1017 (1997). The appellant has the burden of showing that he or she has incurred prejudice. ***State v. Quincy***, 122 Wn. App. 395, 398, 95 P.3d 353 (2004). The court may also consider failure to enter written findings as reversible error if it determines that *delayed* findings and conclusions have been tailored to meet the issues presented in defendant's brief. ***Quincy***, 122 Wn. App. 395 at 398.

However, failure to enter written findings and conclusions is harmless error "if the [trial] court's oral findings are sufficient to permit appellate review." ***Cunningham***, 116 Wn. App. at 226. *See also* ***State v. France***, 121 Wn. App. 394, 401, 88 P.3d 1003 (2004). In determining

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[8] CrR 3.5(c) provides that, "After the hearing, the court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefor."

whether the error was harmless, the court may consider whether written findings were promptly filed once the State was notified of the error and whether the delay was intentional. ***Cunningham***, 116 Wn. App. at 226.

a. Defendant has not assigned error to the trial court's admission of the defendant's statements so the failure to promptly enter findings did not cause prejudice.

Where no assignment of error has been made, the court will generally not consider a claimed error. *See* ***Painting and Decorating Contractors of America v. Ellensburg School District***, 96 Wn.2d 806, 814-815, 638 P.2d 1220 (1992). Defendant does not argue that the trial court's oral ruling was erroneous or inadequate. During the 3.5 hearing, defendant testified that she received her Miranda rights and thereafter responded voluntarily to Deputy Hacker's questions. 1 RP 31. Defendant also testified that she voluntarily made a statement to Deputy Hacker regarding possession of Ms. Walker's EBT card. 1 RP 31. Defendant testified that Deputy Hacker did not coerce or threaten her in any way. 1 RP 39. At the close of the 3.5 hearing, the court made the following oral findings and conclusions:

> Having heard the testimony of the officer and defendant, this Court finds that there was probable cause for the arrest, that Miranda rights were given, and she understood them, and that her statements were made freely and voluntarily to the officer.

1 RP 41. There was no legal or factual dispute as to whether defendant's statements were made freely and voluntarily. The dispute centered upon the *content* of the statements–whether defendant confessed to stealing Ms. Walker's EBT card, or whether defendant told Deputy Hacker that she received permission to use the card. This was a matter for the jury to decide, and was never considered in the 3.5 hearing. The only error claimed by defendant in regard to the 3.5 hearing is the trial court's procedural failure to timely enter written findings and conclusions.[9] Brief of Appellant, 1.

b. The failure to enter written findings of fact and conclusions of law is harmless error because written findings have been submitted for presentation.

In determining whether the failure to enter timely written findings and conclusions was harmless, the court may consider whether written findings were promptly filed once the State was notified of the error and whether the delay was intentional. ***Cunningham***, 116 Wn. App. at 226. The court may consider failure to enter written findings as reversible error if it determines that *delayed* findings and conclusions have been tailored to

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[9] *See infra* pp. 13–16 for discussion of how the delayed entry of written findings and conclusions has not prejudiced defendant; especially, in light of defendant's failure to assign error to the trial court's ruling in the 3.5 hearing.

meet the issues presented in defendant's brief. ***Quincy***, 122 Wn. App. 395 at 398.

In the present case, it was error for the trial court to fail to submit written findings of fact and conclusions of law. However, once the State became aware of this error, written findings were promptly submitted for presentation. The State became aware of the error soon after defendant filed her appeal June 12, 2012, and written findings and conclusions were presented August 2, 2012. Both the trial prosecutor and defense counsel signed and agreed to the August 2, 2012 findings and conclusions. *See* Appendix A. The written findings reflect the decision of the court. There are no significant differences between the oral and written findings of fact and conclusions of law. *Compare supra* p. 5 (oral findings), *with* Appendix A (written findings). In June, 2011, the trial court orally ruled that defendant's statements were admissible. In August, 2012, the trial court entered written findings confirming that the defendant's statements were admissible.

c. The failure to enter written findings of fact and conclusions of law is harmless error given that the trial court's oral findings would have been sufficient for appellate review had the ruling been challenged.

Despite the absence of written findings and conclusions until August 2, 2012, the trial court's oral findings are sufficient to permit

appellate review. In ***State v. Smith***, 67 Wn. App. 81, 85, 834 P.2d 26 (1992), the trial court did not enter written findings but instead made the following oral findings and conclusions:

> As far as the 3.5 issue is concerned, I would find the officers more credible ... I do not find that the defendant was threatened. I do find that he was read his "Miranda" rights at the scene, that he indicated that he understood his rights. And that thereafter the statements he made to police were made freely and voluntarily.[10]

The appellate court in ***Smith*** determined that the trial court's oral findings and conclusions were "more than adequate" to permit review of the 3.5 ruling, and concluded that the failure to enter written findings and conclusions was harmless error. *Id.* at 87.

Similarly, in ***State v. Riley***, 69 Wn. App. 349, 353, 848 P.2d 1288 (1993), the trial court failed to enter written findings and conclusions, but orally determined that defendant: (1) was fully informed of and understood his Miranda rights; (2) voluntarily made a statement; (3) was not coerced; and (4) made the statement knowingly and intelligently. The appellate court in ***Riley*** concluded that the trial court's oral findings were sufficient to permit appellate review and that the failure to enter written findings and conclusions was harmless error. *Id.* at 353.

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[10] Although the trial court in ***Smith*** found that one party was more credible than the other, CrR 3.5(c) does not require such a finding.

The oral findings in the present case are similar to the oral findings in both ***Smith*** and ***Riley***. Here, although the trial court did not enter timely written findings and conclusions, it orally found that the defendant received and understood her Miranda rights and voluntarily made a statement to Deputy Hacker. 1 RP 41. And, because the court found that the statement was made freely and voluntarily, the court concluded that the defendant's statements to Deputy Hacker were admissible at trial. 1 RP 41.

Appellant presents the following issue pertaining to an assignment of error: "Is reversal required where the trial court failed to enter written findings of facts and conclusions of law after the 3.5 hearing and the error was not harmless *because the court's error prevents appellate review*?" Brief of Appellant, 1. However, appellant's brief does not explain *how* the court's error prevents appellate review. "Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration." ***Spradlin Rock Products, Inc. v. Public Utility Dist. No. 1 of Grays Harbor County***, 164 Wn. App. 641, 667, 266 P.3d 229 (2011) (quoting ***Holland v. City of Tacoma***, 90 Wn. App. 533, 538, 954 P.2d 290 (1998)).

d. The failure to enter written findings of fact and conclusions of law is harmless error given that defendant has not demonstrated that she has, as a result of such failure, incurred prejudice.

Case law establishes that "the absence of written findings [is] not grounds for reversal absent prejudice." ***State v. Thompson***, 73 Wn. App. 122, 130, 867 P.2d 691 (1994), *citing to* ***State v. Haynes***, 16 Wn. App. 778, 788, 559 P.2d 583, *review denied*, 108 Wn.2d 1014 (1987).

Although the court did not timely enter its formal findings of fact and conclusions of law, there was no substantive difference between the oral findings and the written findings. Both findings detail that defendant received and understood her Miranda rights and that her statements were made freely and voluntarily to Deputy Hacker. *See supra* p.5. It is unclear how defendant can demonstrate that she has incurred prejudice as a result of the delayed entry of findings because her trial was still conducted under the court's rulings during the 3.5 hearing. Defendant has not demonstrated that she has incurred prejudice as is required by case law, and thus has not established that failure to timely enter findings and conclusions is reversible error. ***Thompson***, 73 Wn. App. at 130.

Defendant alleges that "reversal is required because the court's failure to enter required written findings and conclusions was not harmless error." Brief of Appellant, 10. However, defendant makes no showing of prejudice. Defendant seems to contest the substantive conclusion of the

3.5 hearing (that defendant voluntarily made statements to Deputy Hacker) based upon the failure to timely enter findings and conclusions. However, the defense does not demonstrate how the result of the trial would have been different or how a review of the trial court's findings would be different if the error had not occurred. The trial court orally concluded that defendant received and understood her Miranda rights and that her statements made to Deputy Hacker were made freely and voluntarily. 1 RP 41. Defendant herself even testified at the 3.5 hearing that she received her Miranda rights and that she voluntarily made a statement to Deputy Hacker. 1 RP 31.

Both defendant and Deputy Hacker testified to their respective versions of events during trial before the jury. 1 RP 122; 2 RP 180. The jury, as arbiter of credibility, considered testimony from both defendant and Deputy Hacker and apparently concluded that one party was more credible than the other. These credibility determinations are up to the trier of fact and not subject to review. ***State v. Camarillo***, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Defendant argues that the failure to enter written findings and conclusions is reason alone to reverse defendant's convictions.[11] Brief of Appellant, 9–10, 12. Nevertheless, defendant does not attempt to demonstrate that she has incurred prejudice. Defendant fails to assign error to the court's decision in the 3.5 hearing and does not contest the admissibility of defendant's statements. Defendant was not prejudiced by the delayed entry of written findings and conclusions that affirm the trial court's oral findings and conclusions regarding the admissibility of defendant's statements. The failure to enter written findings and conclusions is harmless error.

2. A REMAND IS REQUIRED FOR THE TRIAL COURT TO EITHER AMEND THE COMMUNITY CUSTODY TERM OR RESENTENCE DEFENDANT CONSISTENT WITH RCW 9.94A.701(9).

On July 23, 2009, the Washington Supreme Court held that, because the exact amount of time that a defendant will spend in confinement can almost never be determined at sentencing, a defendant's

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[11] Defendant cites no authority that reversal is the proper remedy for failure to enter written findings and conclusions. *See e.g.*, ***State v. Smith*** 67 Wn. App. 81, 87, 834 P.2d 26 (1992) ("[…] the State's failure to draft formal written findings and conclusions, while clearly not recommended, does not necessitate reversal of [defendant's] conviction."); ***State v. Thompson***, 73 Wn. App. 122, 130, 867 P.2d 691 (1994) ("the absence of written findings [is] not grounds for reversal absent prejudice."); *and*, ***State v. Bynum***, 76 Wn. App. 262, 265, 884 P.2d 10 (1994) (explaining that failure to enter written findings of fact and conclusions of law does not require reversal where "the court's comprehensive oral ruling is sufficient to allow appellate review.").

judgment and sentence must "explicitly state that the combination of confinement and community custody shall not exceed the statutory maximum."[12] ***In re Personal Restraint of Brooks***, 166 Wn.2d 664, 675, 211 P.3d 1023 (2009). However, the court noted in dicta that its ruling in ***Brooks*** would likely be superseded by amendments of the 2009 regular session of the State Legislature. *Id.* at 672 n. 4.

Effective July 26, 2009, the Washington State legislature passed what is now codified as RCW 9.94A.701(9). It provides that the community custody term specified by RCW 9.94A.701[13] "shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime." Laws of 2009, ch. 375, § 5; former RCW 9.94A.701(8).

In ***State v. Franklin***, 172 Wn.2d 831, 839, 263 P.3d 585 (2011), the Washington Supreme Court addressed the new sentencing requirements and concluded that RCW 9.94A.701(9) applies retroactively and that the Department of Corrections (DOC), not the trial court, is responsible for bringing pre-amendment sentences into compliance with the new statute. *Id.* at 839–840.

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[12] This became known as a "Brooks Notation."
[13] RCW 9.94A.701 is titled, "Community custody—Offenders sentenced to the custody of the department."

In ***State v. Boyd***, ___ Wn.2d ___, 275 P.3d 321, 322 (2012), the Washington Supreme Court held that the trial court, not the DOC, is responsible for bringing post-amendment sentences into compliance with RCW 9.94A.701(9). The court also reiterated its position in ***Franklin***, that "following the enactment of [RCW 9.94A.701], the '*Brooks* notation' procedure no longer complies with statutory requirements." ***Boyd***, 275 P.3d at 322.

Here, defendant was found guilty of identity theft in the second degree, a Class C felony under RCW 9.35.020(3). Class C felonies have a statutory maximum of five years confinement per RCW 9A.20.021. Defendant was sentenced to 57 months confinement and 12 months of community custody. This 69 month total sentence exceeds the statutory maximum of 60 months for a class C felony conviction.

Section 4.6 of defendant's judgment and sentence contains the following "Brooks notation": "PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense." CP 84–96 at 92. However, such notation is no longer sufficient to establish that a sentence complies with statutory requirements. ***Boyd***, 275 P.3d at 322.

Because defendant was convicted of a Class C felony and was sentenced after July 26, 2009 to a combination of confinement and community custody that exceeds the statutory maximum of five years, the

appellate court must remand to the trial court to either amend the community custody term or resentence defendant consistent with RCW 9.94A.701(9) per ***Boyd***.

D. CONCLUSION.

For the reasons listed above, the State asks this court to affirm defendant's conviction but remand to the trial court to either amend the community custody term or resentence defendant consistent with RCW 9.94A.701(9).

DATED: AUGUST 15, 2012

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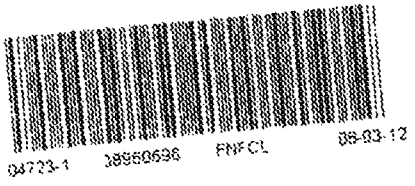
Certificate of Service:
The undersigned certifies that on this day she delivered by ~~U.S. mail~~ or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington Signed at Tacoma, Washington, on the date below.

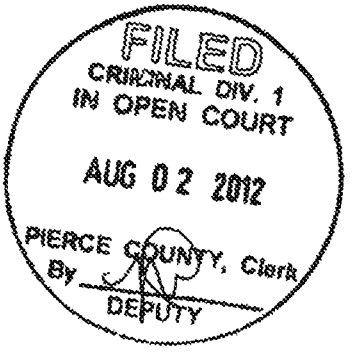
8/15/12 Debra Johnson

Date Signature

APPENDIX "A"

Findings of Fact and Conclusions of Law
Admissibility of Statement, CrR 3.5





SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, Vs. RAVEN VICTORIA PIERCE, Defendant	CAUSE NO. 10-1-04723-1 FINDINGS OF FACT AND CONCLUSIONS OF LAW ADMISSIBILITY OF STATEMENT, CrR 3.5

THIS MATTER having come on for hearing before the Honorable Judge Beverly Grant on the 7th day of June, 2011, and the court having ruled orally on the admissibility of the defendant's statements, now, therefore, the court sets forth the following Findings of Fact and Conclusions of Law as to admissibility.

UNDISPUTED FACTS

1. On November 1, 2010, Pierce County Sheriff's Deputy Dan Hacker contacted the defendant on a fraud complaint at her apartment in Tacoma, Washington.
2. After Deputy Hacker identified the defendant, he verbally advised her of the Miranda warnings.
3. The defendant did not ask for an attorney and made several statement to law enforcement.

DISPUTED FACTS

The defendant testified at the 3.5 hearing that Deputy Hacker told her that if she wasn't cooperative -- he was going to come back and arrest her boyfriend as an accomplice. The defendant

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also testified that Hacker told her that if she would tell the truth he would only book her into jail on identity theft and not the other charges. The defendant said that she did not say anything to the deputy in response to these statements.

CONCLUSIONS AS TO DISPUTED FACTS

Based on the testimony of Deputy Hacker and the defendant – the Court resolved the issue in favor of the State and found that all statements of the defendant were without coercion and all statements were freely and voluntarily made. The Court also found that no threats or promises were made to the defendant.

CONCLUSIONS AS TO ADMISSIBILITY

1. The Miranda warnings given were legally sufficient to advise the defendant of her Constitutional rights. Because the rest of the defendant's custodial statements to law enforcement were made after a knowing, voluntary and intelligent waiver of her constitutional rights, they are admissible in the State's case-in-chief.

DONE IN OPEN COURT this 2nd day of Aug., 2012. Nunc Pro Tunc to the 7th day of June, 2011.

BEVERLY GRANT, JUDGE

Presented by:

SVEN K. NELSON
Deputy Prosecuting Attorney
WSB# 24235

Approved as to Form:

ROBERT DEPAN
Attorney for Defendant
WSB# 17902

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By _____ DEPUTY

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PIERCE COUNTY PROSECUTOR

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